STATEMENT OF THE CASE

Frank Snowney called a toll-free telephone number from California and reserved a room at the Harrah's hotel and casino in Las Vegas, Nevada. App. A at 2a; App. F at 49a. Snowney was told the room price would be $50 per night plus room tax. App. A at 2a. Snowney gave the reservation agent his credit card number and reserved a room. *Id.* While checking out of the hotel in Las Vegas, Snowney paid his bill including a $3 energy surcharge. *Id.*

The Harrah's Hotel Defendants "conduct no business" in California. App. A at 1a. Snowney nonetheless filed a class action against the Harrah's Hotel Defendants in state court in Los Angeles, California on behalf of himself and other hotel patrons who were charged an energy surcharge while staying at Harrah's hotels in Nevada. *Id.* In addition to suing the Harrah's Hotel Defendants, Snowney also sued the following entities: Harrah's Entertainment, Inc., Rio Hotel & Casino, Inc., Harveys Casino Resorts, Harrah's Holding Company, Inc., Rio Vegas Hotel & Casino, Inc., Harrah's Management Company, and Harveys P.C., Inc.

Snowney alleged that he and other guests were billed for an energy surcharge during stays at hotels in Nevada without receiving notice of these charges during the reservation or check-in process. *Id.* at 3a. Snowney's complaint alleged causes of action for fraudulent and deceptive business practices under the California Business and Profession Code, section 17200 *et seq.*; breach of contract; unjust enrichment; and violations of the California Business and Profession Code, section 17500 *et seq.* *Id.*

The defendants filed a motion to quash the summons for lack of personal jurisdiction and filed a supporting affidavit. *Id.* The affidavit from Brad L. Kerby, Corporate Secretary of Harrah's Entertainment, Inc., established that the defendants were incorporated in either Nevada or Delaware and maintained their principal places of business in Nevada. *Id.*[1]

Snowney opposed the motion to quash and submitted declarations and exhibits to the trial court pointing to advertisements via California newspapers, radio stations, and television stations; an interactive web site capable of accepting reservations from California residents and providing driving directions from California; the capability of accepting reservations from California residents via a toll-free telephone number; and the presence of California residents as patrons of the Harrah's Hotel Defendants' facilities in Nevada. *Id.* at 3a-4a.

The trial court granted the motion to quash for lack of personal jurisdiction, finding that Snowney failed to establish either general or specific jurisdiction. *Id.* at 4a. Snowney appealed.

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1. The California Supreme Court stated that an entity called "Harrah's Marketing Services Corporation" operated offices in California, and that this entity is a wholly owned subsidiary of Harrah's Operating Company, Inc. App. A at 3a. Harrah's Marketing Services Corporation was not a defendant in this action, and its asserted activities in California should not bear on the jurisdictional inquiry at issue in this case. An analogous issue is pending before this Court in *Lincoln Property Co. v. Roche*, 125 S. Ct. 1398 (2005), which will address whether an entity that has not been named or joined as a defendant in the lawsuit can be deemed "a real party and interest" for purposes of assessing diversity of citizenship.

The court of appeal reversed as to the Harrah's Hotel Defendants, concluding that these defendants had sufficient contacts with California to justify the exercise of specific jurisdiction. *Id.*; *see also* App. B. at 31a. The court of appeal affirmed the trial court's dismissal as to defendants Harrah's Entertainment, Inc., Rio Hotel & Casino, Inc., Harveys Casino Resorts, Harrah's Rio Holding Company, Inc., Rio Vegas Hotel & Casino, Inc., Harrah's Management Company, and Harveys PC, Inc. Snowney did not challenge this portion of the court of appeal's ruling. App. A at 2a; App. B at 37a.

The Harrah's Hotel Defendants petitioned for review to the California Supreme Court. That court granted review to determine whether the exercise of jurisdiction over the Harrah's Hotel Defendants is proper. App. A at 5a. The California Supreme Court concluded that specific jurisdiction properly exists and affirmed the court of appeal's decision. *Id.* at 5a-7a.

Snowney did not contend that general jurisdiction exists. *Id.* at 6a. Therefore, the California Supreme Court addressed only specific jurisdiction. *Id.* at 6a.

REASONS FOR GRANTING THE PETITION

This Court should grant the petition for writ of certiorari because the California Supreme Court's decision contravenes due process protections limiting a state court's exercise of specific jurisdiction over a nonresident defendant. The California Supreme Court addressed two recurring and unsettled issues concerning the exercise of personal jurisdiction.

The first such issue concerns how specific jurisdiction standards should be reconciled with practices arising from

the prevalence of internet-based commerce. The California Supreme Court erred by placing unwarranted reliance on a distinction between "passive" and "interactive" websites, and by allowing this distinction to serve as a proxy for specific jurisdiction.

The proper rule to be applied is as follows: A non-resident defendant does not purposefully avail itself of the benefits of doing business ***in*** the forum state by providing information that reaches the forum state and by entering into one-time contracts with residents of the forum state that will be performed ***outside*** the forum state.

This rule applies to internet and non-internet contacts alike without reliance upon a passivity/interactivity distinction. Under this rule, Snowney cannot satisfy the purposeful availment prong of the specific jurisdiction test.

The second issue concerns the confusion surrounding the degree of connection that must be shown between contacts and claims to satisfy the "relatedness" prong of the specific jurisdiction test.

The California Supreme Court erred by applying its "substantial connection" test, which other courts do not follow; under this test, specific jurisdiction exists if "'there is a substantial nexus or connection between the defendant's forum activities and the plaintiff's claim.'" App. A at 17a (quoting *Vons Cos., Inc. v. Seabest Foods, Inc.*, 14 Cal.4th 434, 456 (1997)). This amorphous standard fails to protect due process interests underlying the relatedness prong, and renders that prong largely meaningless.

Courts across the country have splintered on both issues. This case provides an appropriate vehicle for addressing these longstanding issues, resolving the attendant conflicts, and bringing order to an extremely disordered area of jurisprudence. *Cf. McNutt v. General Motors Acceptance Corp. of Indiana, Inc.*, 298 U.S. 178, 188 (1936) ("[T]here should be a consistent practice in dealing with jurisdictional questions").

I. The California Supreme Court Applied the Prevailing Three-Part Test for Specific Jurisdiction

Under section 410.10 of the California Code of Civil Procedure, California courts may exercise personal jurisdiction on any basis consistent with the California Constitution and the United States Constitution. App. D at 47a.

A state court's assertion of personal jurisdiction over a nonresident defendant comports with the requirements of the Fourteenth Amendment's Due Process Clause if the defendant has such minimum contacts with the state that the assertion of jurisdiction does not violate traditional notions of fair play and substantial justice. *Vons*, 14 Cal.4th at 444-45 (citing *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945)).

This case focuses solely on specific jurisdiction. *See* App. A at 6a. Specific jurisdiction requires consideration of the "'relationship among the defendant, the forum, and the litigation.'" *Helicopteros Nacionales de Columbia, S.A. v. Hall*, 466 U.S. 408, 414 (1984) (quoting *Shaffer v. Heitner*, 433 U.S. 186, 204 (1977)).

The California Supreme Court has held that a court may exercise specific jurisdiction over a nonresident defendant if (1) the defendant has purposely availed itself of forum benefits; (2) the controversy is related to or arises out of the defendant's contacts with the forum; and (3) the assertion of personal jurisdiction would comport with fair play and substantial justice. *Vons*, 14 Cal.4th at 446-47; *see also Helicopteros*, 466 U.S. at 414; *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472-73 (1985).

The issues in this case concern the first two prongs of the test for specific jurisdiction – purposeful availment and relatedness.

Purposeful availment exists when a nonresident defendant has "'purposefully directed' its activities at residents of the forum. *Burger King*, 471 U.S. at 472 (quoting *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 774 (1984)). This requirement reflects the protections provided by the Due Process Clause for a litigant's liberty interest in not being subject to binding judgments of a forum with which it has established no meaningful contacts, ties or relationship. *Burger King*, 471 U.S. at 471-72 (citing *International Shoe*, 326 U.S. at 319).

The boundaries of the relatedness prong are more uncertain. Because only general jurisdiction was at issue in *Helicopteros*, this Court declined to decide whether "the terms 'arising out of' and 'related to' describe different connections between a cause of action and a defendant's contacts with a forum . . ." 466 U.S. at 415 n.10. This Court also declined to decide "what sort of tie between a cause of action and a defendant's contacts with a forum is necessary

to a determination that either connection exists." *Id.* The Court further stated,

> Nor do we reach the question whether, if the two types of relationships differ, a forum's exercise of personal jurisdiction in a situation where the cause of action "relates to," but does not "arise out of," the defendant's contacts with the forum should be analyzed as an assertion of specific jurisdiction.

Id.

It appeared that additional guidance on the definition of "related" for purposes of specific jurisdiction would be forthcoming in *Carnival Cruise Lines, Inc. v. Shute*, 499 U.S. 585, 595 (1991), but this Court decided the case on the interpretation of a contractual forum selection clause and did not reach the definitional issue with respect to the second prong of the specific jurisdiction test.

These circumstances have set the stage for lower courts to formulate competing tests in the course of analyzing both the purposeful availment and the relatedness prongs of the specific jurisdiction test. The existence of differing approaches, and the uncertainty that flows from such a situation, are vividly illustrated by the California Supreme Court's opinion in this case.

II. In Applying the Three-Part Test for Specific Jurisdiction, the California Supreme Court Used Erroneous Standards for the Purposeful Availment and Relatedness Prongs

The California Supreme Court concluded that purposeful availment had been established in this case based on a combination of (1) website information accessible in California; and (2) billboard, newspaper, radio and television advertisements in California and the provision of a toll-free telephone number for reservations. *See* App. A at 11a-12a.

Internet contacts are the linchpin of the California Supreme Court's analysis of the purposeful availment prong. The court relied upon a combination of internet and non-internet contacts to cobble together a basis for specific jurisdiction; without these internet contacts, the court's opinion indicates that the other contacts standing alone would not suffice to establish specific jurisdiction. *See id.* at 12a ("[E]ven assuming that defendants' Website, by itself, is not sufficient to establish purposeful availment, the site in conjunction with defendants' other contacts with California undoubtedly is"). Therefore, proper application of the purposeful availment standard in the context of internet contacts is crucial to and dispositive of the proper resolution of this case.

As discussed below, the California Supreme Court's application of the purposeful availment prong not only is erroneous, but also perpetuates a festering conflict in the case law regarding the proper approach to personal jurisdiction questions based on internet contacts.

Coupled with an overly inclusive standard for the relatedness prong of the specific jurisdiction test, the net effect of the California Supreme Court's analysis is to diminish the due process protections that the specific jurisdiction test exists to enforce.

A. The California Supreme Court's Standard for Purposeful Availment is Erroneous and Perpetuates a Conflict in the Case Law

The exercise of personal jurisdiction over a nonresident defendant when the standards for specific jurisdiction have not been satisfied amounts to an exercise of general jurisdiction. *See Helicopteros*, 466 U.S. at 414-15 & n.9.; *see also Perkins v. Benguet Consolidated Mining Co.*, 342 U.S. 437, 437, 445 (1952); *Keeton*, 465 U.S. at 779-80. The more that courts water down the standards for specific jurisdiction, including the purposeful availment prong, the more that the line between general and specific jurisdiction disappears. The decision below from the California Supreme Court is a prime example of this phenomenc The explosion of e-commerce in the last decade has accelerated this trend as courts have struggled to adapt specific jurisdiction standards to new circumstances involving internet contacts.

With respect to the internet contacts at issue in this case, the California Supreme Court applied the sliding scale analysis described in *Zippo Mfg. Co. v. Zippo Dot Com, Inc.*, 952 F. Supp. 1119 (W.D. Pa. 1997).

> At one end of the spectrum are situations where a defendant clearly does business over the Internet. If the defendant enters into contracts with residents of a foreign jurisdiction that involves

> the knowing and repeated transmission of computer files over the Internet, personal jurisdiction is proper. . . . At the opposite end are situations where a defendant has simply posted information on an Internet Web site which is accessible to users in foreign jurisdictions. A passive Web site that does little more than make information available to those who are interested in it is not grounds for the exercise [of] personal jurisdiction . . . . The middle ground is occupied by interactive Web sites where a user can exchange information with the host computer. In these cases, the exercise of jurisdiction is determined by examining the level of interactivity and commercial nature of the exchange of information that occurs on the Web site.

Id. at 1124 (citations omitted). The California Supreme Court concluded that the Harrah's Hotel Defendants' website falls within the middle ground of this sliding scale because that site provides information about room rates to visitors and permits visitors to make reservations at their hotels; the website therefore is interactive to at least some degree. *See* App. A at 9a.

As the California Supreme Court correctly observed, "In determining whether a site falling within this middle ground is sufficient to establish purposeful availment, however, courts have been less than consistent." *See* App. A at 9a-10a. The court identified several competing approaches to application of the purposeful availment prong in the context of internet contacts.

Some decisions suggest that sufficient minimum contacts are established, and a defendant is doing business over the

internet, when the defendant's website is capable of accepting purchase orders from residents of the forum state. *See generally Shamsuddin v. Vitamin Research Prods.*, 346 F. Supp. 2d 804, 810 (D. Md. 2004).[2]

Other decisions suggest that more than mere interactivity is necessary, such as transactions between a defendant and residents of the forum or conduct of the defendant purposefully directed at residents of the foreign state. *See Millennium Enters, Inc. v. Millennium Music, LP*, 33 F. Supp. 2d 907, 920 (D. Or. 1999); *see also Toys "R" Us, Inc. v. Step Two S.A.*, 318 F.3d 446, 454 (3d Cir. 2003).[3]

Some courts have eschewed *Zippo*'s emphasis on website interactivity and have focused instead on traditional due process principles, asking whether the site expressly targets residents of a forum state. *See Shamsuddin*, 346 F. Supp. 2d at 810-11; *Hy Cite Corp. v. Badbusinessbureau.com, L.L.C.*, 297 F. Supp. 2d 1154, 1160 (W.D. Wis. 2004). Under this approach, "Website interactivity is important insofar as it

2. *See also Uebler v. Boss Media, AB*, 363 F. Supp. 2d 499, 506 (E.D.N.Y. 2005); *The Sports Authority Michigan, Inc. v. Justballs, Inc.*, 97 F. Supp. 2d 806, 812 (E.D. Mich. 2000); *Euromarket Designs, Inc. v. Crate & Barrel Ltd.*, 96 F. Supp. 2d 824, 837-38 (N.D. Ill. 2000); *Stomp v. NeatO, LLC*, 61 F. Supp. 2d 1074, 1078 (C.D. Cal. 1999).

3. *See also Tech Heads, Inc. v. Desktop Service Center, Inc.*, 105 F. Supp. 2d 1142, 1149-50 (D. Or. 2000). For example, a number of courts have held that the interactivity of internet auction sites does not establish specific jurisdiction. *See United Cutlery Corp. v. NFZ Inc.*, Civil No. CCB-03-1723, 2003 WL 22851946 at *3-*4 (D. Md. Dec. 1, 2003); *Machulsky v. Hall*,, 210 F. Supp. 2d 531, 543-44 (D.N.J. 2002); *Winfield Collection, Ltd. v. McCauley*, 105 F. Supp. 2d 746, 751 (E.D. Mich. 2000).

reflects commercial activity, and then only insofar as that commercial activity demonstrates purposeful targeting of residents of the forum state or purposeful availment of the benefits or privileges of the forum state." *Shamsuddin*, 346 F. Supp. 2d at 813; *see also Neogen Corp. v. Neo Gen Screening, Inc.*, 282 F.3d 883, 890 (6th Cir. 2002) ("A defendant purposefully avails itself of the privilege of acting in a state through its website if the website is interactive to a degree that reveals specifically intended interaction with residents of the state").[4]

The California Supreme Court purported to avoid taking a position on these various approaches by asserting that the Harrah's Hotel Defendants' website establishes purposeful availment "by any standard." *See* App. A at 11a. This effort to avoid the issue fails because the court's analysis, at its core, revolves around the passive/interactive distinction. *See id.* at 11a-12a.

To be sure, the court attempted to expand the discussion of relevant contacts by asserting that the Harrah's website provided driving directions from California to hotels in Nevada, and by asserting in conclusory fashion that some of the Harrah's Hotel Defendants' patrons "undoubtedly made reservations using their Web site." App. A at 11a. However, it is undisputed that, with respect to Snowney's claim, the internet did not play any part in his decision to make reservations at a Harrah's hotel in Las Vegas and did not serve as the vehicle by which he made reservations. According to Snowney's declaration, he saw newspaper advertisements for Harrah's hotel and casino in Las Vegas

4. *See also Young v. New Haven Advocate*, 315 F.3d 256, 263 (4th Cir. 2002); *ALS Scan, Inc. v. Digital Service Consultants, Inc.*, 293 F.3d 707, 712 (4th Cir. 2002).

before his stay. App. F at 49a. He called the Harrah's reservation line to reserve a room. *Id.* Snowney's declaration says nothing about viewing or using a website. *Id.* The website is beside the point insofar as Snowney himself is concerned, and speculation about what other hotel patrons did is not a proper basis for the exercise of personal jurisdiction.[5]

Nor should the availability of driving directions on a website be dispositive. *See* App. A. at 11a. If any conclusion can be drawn from the provision of driving directions in this case, it is that gambling in Nevada requires a trip to Nevada.

In any event, the ready accessibility of driving directions on the internet – using nothing more than a starting address and ending address obtained from an entity's website – makes it inappropriate to use driving directions on the internet as a marker for purposeful availment. By Snowney's logic, simply

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5. No class has been certified in this case. The California Supreme Court's opinion provides no support for the assumption that purported contacts involving absent class members of an uncertified class action properly may be taken into account in assessing personal jurisdiction over non-residents defendants. If class status is rejected, it is difficult to discern the relevance of these asserted contacts with persons who are not part of the litigation. Even if one assumes for argument's sake that a class is certified, it is far from clear that asserted contacts involving absent class members would control the inquiry into personal jurisdiction over class-action defendants. Given that "a forum State may exercise jurisdiction over the claim of an absent class-action plaintiff, even though that plaintiff may not possess the minimum contacts with the forum which would support personal jurisdiction over a defendant," it is tenuous at best to extrapolate personal jurisdiction over non-resident defendants based upon asserted contacts involving absent class members. *See Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 811 (1985).

making an address available on a website amounts to purposeful availment because driving directions using that address are readily accessible via the internet in California and every other state. An approach that predicates personal jurisdiction on the mere accessibility of websites in all states has been "largely discredited." *See Shamsuddin*, 346 F. Supp. 2d at 808 (citing *Inset Sys., Inc. v. Instruction Set, Inc.*, 937 F. Supp. 161, 165 (D. Conn. 1996)).

The California Supreme Court's undue reliance on the passive/interactive distinction is underscored by the court's effort to distinguish *Bensusan Restaurant Corp. v. King*, 937 F. Supp. 295 (S.D.N.Y. 1996), *aff'd*, 126 F.3d 25 (2d Cir. 1997), a case in which website contacts were insufficient to establish personal jurisdiction. The California Supreme Court distinguished *Bensusan* because, "unlike the Web site at issue here, the site in *Bensusan* was wholly passive – not interactive – and did not specifically target forum residents." App. A at 11a-12a. "Moreover, the defendant in *Bensusan*, unlike defendants here, conducted no business with forum residents through his Web site." *Id.* at 12a.

The interactive aspect of the website at issue should not determine whether the purposeful availment standard has been satisfied. Using a particular website's degree of interactivity as a proxy for purposeful availment imposes an unnecessary and unhelpful overlay upon the fundamental specific jurisdiction inquiry. Additionally, such an approach fosters uncertainty by unwisely linking threshold personal jurisdictional determinations to website characteristics that are subject to change as technology evolves.

The proper approach is to follow the reasoning of those courts that have focused not just on a website's degree of interactivity, but have instead made a combined inquiry into directed activities and the effects of the defendant's actions ***in the forum state***. This approach derives from *Calder v. Jones*, 465 U.S. 783 (1984), a pre-internet libel case that focused the specific jurisdiction inquiry on both the direction of activity toward California ***and*** the impact of that activity felt ***in*** California.

When the focus is placed on the combined inquiry into directed activities and effects – and not on malleable distinctions among the interactivity levels of particular websites – it becomes apparent that the effects at issue in this case occurred in Nevada rather than in California.

Because Harrah's business involves gambling, that business cannot be conducted in California. The Harrah's Hotel Defendants conduct their business in their facilities in Nevada, not on their websites. No purposeful availment occurs when a nonresident defendant merely advertises in California and enters into one-time contracts with California residents that necessarily will be performed in a different state.

When a defendant enters into a substantial and continuous relationship with a resident of the forum state such that some of the contemplated future consequences of the relationship occur in the forum state, a nonresident defendant is subject to specific jurisdiction in the forum state. *See, e.g., Burger King*, 471 U.S. at 473-74. By contrast, when a defendant makes information available in the forum state and enters into a transaction with a resident of the forum state, the subject matter of which will ***not*** occur in the forum

state, the nonresident defendant does not have sufficient contacts with the forum on which to base the exercise of specific jurisdiction. Under this reasoning, the California Supreme Court cannot bolster the meager internet contacts at issue by pointing to advertisements in other media and a toll-free telephone number. App. A at 12a.

Promotional activities such as placement of newspaper, magazine, telephone and billboard advertisements in the forum state by a non-resident defendant in an adjoining state do not give rise to specific jurisdiction even if those advertisements prompt a visit to the non-resident defendant's premises resulting in injury. *See Munley v. Second Judicial District Court*, 761 P.2d 414, 416 (Nev. 1988) (orig. proceeding) ("Northstar's promotion activities do not confer jurisdiction upon the district court even though petitioner's trip to Northstar was in response to such promotional activities"). Here, the object of all contacts identified in the California Supreme Court's opinion was a hotel room at a Harrah's casino in Nevada. The alleged overcharge that forms the basis for Snowney's complaint occurred in Nevada when Snowney checked out of the hotel in Nevada.

Purposeful availment cannot be found here based on these promotional activities without making that concept so broad that it ceases to provide any protection against the unconstitutional exercise of personal jurisdiction over a nonresident defendant. The insubstantial nature of these activities is confirmed by the California Supreme Court's reliance on a website to bolster them, and by the court's indication that these activities would not be sufficient by themselves to establish purposeful availment without the presence of additional internet contacts. *See* App. A at 12a.

B. The California Supreme Court's Standard for Relatedness, Which Relies on a Weak "Substantial Connection" Test, is Erroneous and Perpetuates a Conflict in the Case Law

The expansion of specific jurisdiction accomplished by the California Supreme Court's purposeful availment analysis is exacerbated by its overly broad standard for the relatedness prong.[6]

This Court has left open the issue of further defining the degree of relatedness required between the contacts giving rising to specific jurisdiction and the claims at issue. *See Helicopteros*, 466 U.S. at 415 n.10; *Shute*, 499 U.S. at 589-90. In the absence of guidance from this Court, lower courts have adopted divergent and conflicting approaches to analyzing how close the relationship must be between contacts and "related" claims.

As the California Supreme Court acknowledged, there are competing formulations of the relatedness prong in use by lower courts. *See* App. A at 16a-17a. Some courts have required a contact to be the "proximate cause" of the claimed injury. *See, e.g. Pizarro v. Hoteles Concorde Int'l, C.A.*, 907

6. The California Supreme Court briefly discussed the third prong of the personal jurisdiction test, which addresses whether the exercise of jurisdiction would be unfair and unreasonable. App. A at 21a. The court stated that "defendants do not contend the exercise of jurisdiction would be unfair or unreasonable, and we see no reason to conclude otherwise." *Id.* The Harrah's Hotel Defendants do not concede that the third prong is satisfied and did not make such a concession in their brief. Rather, the Harrah's Hotel Defendants argued below that the third prong need not be reached because Snowney failed to establish the threshold requirement of purposeful availment.

F.2d 1256, 1260 (1st Cir. 1990).[7] The Ninth Circuit has required the contact to be the "but-for" cause of the injury. *See Shute v. Carnival Cruise Lines*, 897 F.2d 377, 385 (9th Cir. 1990), *rev'd on other grounds*, 499 U.S. 585 (1991).[8] Other courts and commentators have looked for "substantive relevance" of the contact to the cause of action. *See* Lea Brilmayer, *How Contacts Count: Due Process Limitations on State Court Jurisdiction*, 1980 SUP. CT. REV. 77, 82; *cf. United Elec. Radio & Mach. Workers v. 163 Pleasant St. Corp.*, 960 F.2d 1080, 1089 (1st Cir. 1992) ("[T]he defendant's in-state conduct must form an 'important, or [at least] material, element of proof' in the plaintiff's case") (quoting *Marino v. Hyatt Corp.*, 793 F.2d 427, 430 (1st Cir. 1986)).

The California Supreme Court eschewed all of these approaches, opting instead to continue following a test it denominates as the "substantial connection test." Under this test, the relatedness requirement is satisfied if "'there is a substantial nexus or connection between the defendant's forum activities and the plaintiff's claim.'" *See* App. A at 17A (quoting *Vons*, 14 Cal.4th 456).[9] This standard is so vague as to be no standard at all; rather, it is an after-the-fact rationalization for a relatedness determination already made. The California Supreme Court specifically declined the invitation in this case to replace this standard with the substantive relevance test. App. A at 16a-17a.

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7. *See also Pinker v. Roche Holdings, Ltd.*, 292 F.3d 361, 371-72 (3d Cir. 2002).

8. *See also Deluxe Ice Cream Co. v. R.C.H. Tool Corp.*, 726 F.2d 1209, 1216 (7th Cir. 1984); *In-Flight Devices Corp. v. Van Dusen Air, Inc.*, 466 F.2d 220, 231 (6th Cir. 1972).

9. *See also Chew v. Dietrich*, 143 F.3d 24, 29-30 (2d Cir. 1998).

Selecting the proper relatedness standard is no mere academic exercise in creating different names for different tests. The particular circumstances of this case highlight the practical implications of choosing and applying different standards for the relatedness prong.

It is undisputed based on Snowney's declaration that Snowney's stay at the Harrah's hotel and casino in Las Vegas was not predicated on the Harrah's Hotel Defendants' website. App. F at 49a. In his declaration, Snowney referenced only an advertisement from the *Los Angeles Times* as having provided information; he did not reference any information from or visits to the website. *Id.*

The facts here thus provide a concrete example of the potential circumstance this Court identified in *Helicopteros* where a claim does not "arise out of" particular contacts but purportedly "relates to" such contacts. At a sufficient level of abstraction, a website that provides information can be said to "relate to" other means of providing information such as advertisements. But under the particular facts established in this record, even if Snowney can argue that the internet contacts upon which specific jurisdiction was predicated are ***related*** to his claims, he cannot plausibly argue that his claims ***arise*** from such internet contacts. Nor can he demonstrate that the facts encompassed by the supposed contacts with California would prove elements of his claims under substantive California law.

Notwithstanding the importance of this distinction, the California Supreme Court applied its expansive "substantial connection test" in such a way as to obliterate the distinction. App. A at 17a-18a. Grouping website information and other means of providing information under the general category

of "promotional activities in California," the California Supreme Court glossed over the distinction between a cause of action that "relates to" contacts versus a cause of action that "arise[s] out of" such contacts. The California Supreme Court simply brushed the distinction aside and stated, "The fact that many of defendants' contacts with California do not directly arise out of plaintiff's transaction with defendants is immaterial." App. A at 18a. The court then collapsed the relatedness prong into purposeful availment: "By purposefully and successfully soliciting the business of California residents, defendants could reasonably anticipate being subject to litigation in California in the event their solicitations caused an injury to a California resident." *Id.* at 18a-19a.

Proper application of the proper substantive relevance test establishes that the relatedness prong is not satisfied in this case. Snowney alleged a $3 injury, which occurred upon checkout at the Harrah's hotel and casino in Las Vegas. This claimed injury is not related to an internet presence that can be viewed from a computer in California, or to advertisements. Advertising a vacation destination and providing the means to make reservations via the internet are not related to torts occurring at the destination. *See Bell v. Imperial Palace Hotel/Casino, Inc.*, 200 F. Supp. 2d 1082, 1087-88 (E.D. Mo. 2001); *Smith v. Basin Park Hotel, Inc.*, 178 F. Supp. 2d 1225, 1230-31 & n.5 (N.D. Okla. 2001); *Munley*, 761 P.2d at 416.

Even if the purported injury is assumed for argument's sake to be "related" to these contacts, it does not arise out of the internet contacts that were crucial to the California Supreme Court's holding that personal jurisdiction properly may be exercised here. Under these circumstances the exercise of personal jurisdiction violates the due process protections of the Fourteenth Amendment.

CONCLUSION

For the reasons stated above, the petition for writ of certiorari should be granted and the decision of the California Supreme Court should be reversed.

Respectfully submitted,

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APPENDIX

APPENDIX A — OPINION OF THE SUPREME COURT OF CALIFORNIA FILED JUNE 6, 2005

IN THE SUPREME COURT OF CALIFORNIA

S124286

Ct.App. 2/3 B164118

Los Angeles County
Super. Ct. No. BC267575

FRANK SNOWNEY et al.,

Plaintiffs and Appellants,

v.

HARRAH'S ENTERTAINMENT, INC., et al.,

Defendants and Respondents.

In this case, a California resident filed a class action against a group of Nevada hotels for failing to provide notice of an energy surcharge imposed on hotel guests. Although these hotels conduct no business and have no bank accounts or employees in California, they do advertise heavily in California and obtain a significant percentage of their business from California residents. These advertising activities include billboards located in California, print ads in California newspapers, and ads aired on California radio and television stations. These hotels also maintain an Internet Web site and toll-free phone number where visitors or callers may obtain room quotes and make reservations. We now

consider whether, based on these activities, California courts may exercise personal jurisdiction over these hotels, and conclude that they may.

I.

Defendants Harrah's Las Vegas, Inc., Harrah's Laughlin, Inc., Harrah's Operating Company, Inc. (HOC), Rio Properties, Inc., and Harveys Tahoe Management Company, Inc. (collectively defendants) own and operate hotels in Nevada. Plaintiff Frank Snowney is a California resident. In 2001, plaintiff reserved a room by phone from his California residence at one of the hotels owned and operated by defendants. To make the reservation, plaintiff gave the reservation agent his credit card number. At the time plaintiff made the reservation, the agent told him that the room would cost $50 per night plus the room tax. When plaintiff paid his bill at checkout, however, the bill included a $3 energy surcharge.

Plaintiff filed the instant class action against defendants and other entities[1] on behalf of himself and other "persons who were charged an energy surcharge as an overnight hotel guest in one of the defendant's hotels, yet were never given notice that there was an energy surcharge and/or what such

1. These other entities are Harrah's Entertainment, Inc. (HEI), Rio Hotel & Casino, Inc., Harveys Casino Resorts, Harrah's Reno Holding Company, Inc., Rio Vegas Hotel & Casino, Inc., Harrah's Management Company, and Harveys P.C., Inc. The Court of Appeal affirmed the trial court's dismissal as to these defendants, and Snowney did not petition for review of, and does not appear to challenge, this portion of the court's ruling.

charge would be." In the complaint, plaintiff alleged that defendants charged him and other guests an energy surcharge during their stays at hotels owned and operated by defendants without providing notice of these charges during the reservation or check-in process. He further alleged that, in doing so, defendants charged more than the advertised or quoted price. His complaint alleged causes of action for: (1) fraudulent and deceptive business practices in violation of Business and Professions Code section 17200 et seq.; (2) breach of contract; (3) unjust enrichment; and (4) violations of Business and Professions Code section 17500 et seq.

In response, defendants and other entities filed a motion to quash the summons for lack of personal jurisdiction. In support of the motion, defendants submitted a declaration from Brad L. Kerby, the corporate secretary of HEI. Kerby stated that defendants were incorporated in either Nevada or Delaware and maintained their principal place of business in Nevada. According to Kerby, defendants conducted no business in California and had no bank accounts or employees in California. Kerby, however, acknowledged that HOC was licensed to do business in California and that Harrah's Marketing Services Corporation (HMSC), a wholly owned subsidiary of HOC, operated offices in California to "assist customers who contact those offices" and "attempt[ed] to attract a limited number of high-end gaming patrons to Harrah's properties."

In opposition, plaintiff submitted several declarations, a transcript of Kerby's deposition, and various exhibits. This evidence established that defendants: (1) advertised extensively to California residents through billboards in

California, California newspapers, and California radio and television stations; (2) had a joint marketing agreement with National Airlines, which served Los Angeles and San Francisco, and advertised in the airline's print media; (3) maintained an interactive Web site that accepted reservations from California residents, provided driving directions to their hotels from California, and touted the proximity of their hotels to California; (4) accepted reservations from California residents through their Internet Web site and a toll-free phone number listed on the site and in their advertisements; (5) obtained a significant percentage of their patrons from California through reservations made through the toll-free number and Web site; and (6) regularly sent mailings to those California residents among the four to six million people enrolled in their "Total Rewards" program. Plaintiff's evidence also confirmed that HSMC maintained several offices in California to handle reservations and market defendants' hotels.

The trial court granted the motion to quash for lack of personal jurisdiction. Specifically, the court found that plaintiff had failed to establish either general or specific jurisdiction. Plaintiff appealed.

The Court of Appeal reversed as to defendants, concluding that defendants had "sufficient contacts with California to justify the exercise of specific jurisdiction." Specifically, the court held that: (1) "by soliciting and receiving the patronage of California residents" through their advertising activities, defendants "have purposefully directed their activities at California residents, have purposefully derived benefit from their contacts with California, and have

established a substantial connection with this state"; (2) defendants' California contacts "are substantially connected to causes of action that challenge an alleged mandatory surcharge imposed on all hotel guests"; and (3) the exercise of jurisdiction over defendants would be fair and reasonable. In doing so, the court declined to follow *Circus Circus Hotels, Inc. v. Superior Court* (1981) 120 Cal.App.3d 546 (*Circus Circus*), disapproved in part in *Vons Companies, Inc. v. Seabest Foods, Inc.* (1996) 14 Cal.4th 434, 464 (*Vons*).

We granted review to determine whether the exercise of jurisdiction over defendants is proper.

II.

"California courts may exercise personal jurisdiction on any basis consistent with the Constitution of California and the United States. (Code Civ. Proc., § 410.10.) The exercise of jurisdiction over a nonresident defendant comports with these Constitutions 'if the defendant has such minimum contacts with the state that the assertion of jurisdiction does not violate "'traditional notions of fair play and substantial justice.'" ([*Vons*], *supra*, 14 Cal.4th [at p.] 444, quoting *Internat. Shoe Co. v. Washington* (1945) 326 U.S. 310, 316 (*Internat. Shoe*).)" (*Pavlovich v. Superior Court* (2002) 29 Cal.4th 262, 268 (*Pavlovich*).)

"The concept of minimum contacts . . . requires states to observe certain territorial limits on their sovereignty. It 'ensure[s] that the States, through their courts, do not reach out beyond the limits imposed on them by their status as

coequal sovereigns in a federal system.'" (*Vons, supra*, 14 Cal.4th at p. 445, quoting *World-Wide Volkswagen Corp. v. Woodson* (1980) 444 U.S. 286, 292 (*World-Wide Volkswagen*).) To do so, the minimum contacts test asks "whether the 'quality and nature' of the defendant's activity is such that it is 'reasonable' and 'fair' to require him to conduct his defense in that State." (*Kulko v. California Superior Court* (1978) 436 U.S. 84, 92, quoting *Internat. Shoe, supra*, 326 U.S. at pp. 316-317.) The test "is not susceptible of mechanical application; rather, the facts of each case must be weighed to determine whether the requisite 'affiliating circumstances' are present." (*Kulko*, at p. 92.)

Under the minimum contacts test, "[p]ersonal jurisdiction may be either general or specific." (*Vons, supra*, 14 Cal.4th at p. 445.) Because plaintiff does not claim general jurisdiction, we only consider whether specific jurisdiction exists here.

"When determining whether specific jurisdiction exists, courts consider the '"relationship among the defendant, the forum, and the litigation."' (*Helicopteros Nacionales de Colombia v. Hall* (1984) 466 U.S. 408, 414, quoting *Shaffer v. Heitner* (1977) 433 U.S. 186, 204.) A court may exercise specific jurisdiction over a nonresident defendant only if: (1) 'the defendant has purposefully availed himself or herself of forum benefits' (*Vons, supra*, 14 Cal.4th at p. 446); (2) 'the "controversy is related to or 'arises out of' [the] defendant's contacts with the forum"' (*ibid.*, quoting *Helicopteros, supra*, 466 U.S. at p. 414); and (3) '"the assertion of personal jurisdiction would comport with 'fair play and substantial justice'"' (*Vons, supra*, 14 Cal.4th

at p. 447, quoting *Burger King Corp. v. Rudzewicz* (1985) 471 U.S. 462, 472-473 [(*Burger King*)].)" (*Pavlovich, supra*, 29 Cal.4th at p. 269.)

"When a defendant moves to quash service of process" for lack of specific jurisdiction, "the plaintiff has the initial burden of demonstrating facts justifying the exercise of jurisdiction." (*Vons, supra*, 14 Cal.4th at p. 449.) "If the plaintiff meets this initial burden, then the defendant has the burden of demonstrating 'that the exercise of jurisdiction would be unreasonable.'" (*Pavlovich, supra*, 29 Cal.4th at p. 273, quoting *Vons*, at p. 449.) Where, as here, " 'no conflict in the evidence exists . . . the question of jurisdiction is purely one of law and the reviewing court engages in an independent review of the record.'" (*Vons*, at p. 449.) Applying these standards to the facts of this case, we conclude that California may exercise specific jurisdiction over defendants.

A.

We first determine whether defendants purposefully availed themselves of the privilege of doing business in California. Based on defendants' purposeful and successful solicitation of business from California residents, we find that plaintiff has established purposeful availment.

"'The purposeful availment inquiry . . . focuses on the defendant's intentionality. [Citation.] This prong is only satisfied when the defendant purposefully and voluntarily directs [its] activities toward the forum so that [it] should expect, by virtue of the benefit [it] receives, to be subject to the court's jurisdiction based on' [its] contacts with the

forum." (*Pavlovich, supra*, 29 Cal.4th at p. 269, quoting *U.S. v. Swiss American Bank, Ltd.* (1st Cir. 2001) 274 F.3d 610, 623-624.) Thus, purposeful availment occurs where a nonresident defendant "'purposefully direct[s]' [its] activities at residents of the forum" (*Burger King, supra*, 471 U.S. at p. 472), "'purposefully derive[s] benefit' from" its activities in the forum (*id.* at p. 473), "create[s] a 'substantial connection' with the forum" (*id.* at p. 475), "'deliberately' has engaged in significant activities within" the forum (*id.* at pp. 475-476), or "has created 'continuing obligations' between [itself] and residents of the forum" (*id.* at p. 476). By limiting the scope of a forum's jurisdiction in this manner, the "'purposeful availment' requirement ensures that a defendant will not be haled into a jurisdiction solely as a result of 'random,' 'fortuitous,' or 'attenuated' contacts . . . ." (*Id.* at p. 475.) Instead, the defendant will only be subject to personal jurisdiction if "'it has clear notice that it is subject to suit there, and can act to alleviate the risk of burdensome litigation by procuring insurance, passing the expected costs on to customers, or, if the risks are too great, severing its connection with the state.'" (*Pavlovich*, at p. 269, quoting *World-Wide Volkswagen, supra*, 444 U.S. at p. 297.)

Here, defendants' contacts with California are more than sufficient to establish purposeful availment. We begin by examining defendants' Internet contacts. To determine whether a Web site is sufficient to establish purposeful availment, we first look to the sliding scale analysis described in *Zippo Mfg. Co. v. Zippo Dot Com, Inc.* (W.D.Pa. 1997) 952 F.Supp. 1119 (*Zippo*). (See *Pavlovich, supra*, 29 Cal.4th at p. 274.) "At one end of the spectrum are situations where a defendant clearly does business over the Internet. If the

defendant enters into contracts with residents of a foreign jurisdiction that involve the knowing and repeated transmission of computer files over the Internet, personal jurisdiction is proper. [Citation.] At the opposite end are situations where a defendant has simply posted information on an Internet Web site which is accessible to users in foreign jurisdictions. A passive Web site that does little more than make information available to those who are interested in it is not grounds for the exercise [of] personal jurisdiction. [Citation.] The middle ground is occupied by interactive Web sites where a user can exchange information with the host computer. In these cases, the exercise of jurisdiction is determined by examining the level of interactivity and commercial nature of the exchange of information that occurs on the Web site." (*Zippo*, at p. 1124.)

Defendants' Web site, which quotes room rates to visitors and permits visitors to make reservations at their hotels, is interactive and, at a minimum, falls within the middle ground of the *Zippo* sliding scale.[2] In determining whether a site

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2. Snowney contends the site falls within the first *Zippo* category and establishes that defendants conduct business in California. Although we question this contention (see *Bell v. Imperial Palace Hotel/Casino, Inc.* (E.D.Mo. 2001) 200 F.Supp.2d 1082, 1087-1088 (*Bell*) [holding that a hotel's Web site permitting visitors to make online reservations falls in the middle of the *Zippo* continuum]; *Millennium Enterprises, Inc. v. Millennium Music, LP* (D.Or. 1999) 33 F.Supp.2d 907, 920 (*Millennium*) [holding that a Web site that permits visitors to purchase the defendants' merchandise falls in the middle of the *Zippo* continuum]), we need not resolve it here because defendants' California contacts clearly establish purposeful availment.

falling within this middle ground is sufficient to establish purposeful availment, however, courts have been less than consistent.

"Some courts have held that sufficient minimum contacts are established, and the defendant is 'doing business' over the Internet where the defendant's website is capable of accepting and does accept purchase orders from residents of the forum state." (*Shamsuddin v. Vitamin Research Products* (D.Md. 2004) 346 F.Supp.2d 804, 810.) Other courts have suggested that "'something more'" is necessary, such as "'deliberate action' within the forum state in the form of transactions between the defendant and residents of the forum or conduct of the defendant purposefully directed at residents of the forum state." (*Millennium, supra*, 33 F.Supp.2d at p. 921; see also *Toys "R" Us, Inc. v. Step Two, S.A.* (3d Cir. 2003) 318 F.3d 446, 454 ["there must be evidence that the defendant 'purposefully availed' itself of conducting activity in the forum state, by directly targeting its web site to the state, knowingly interacting with residents of the forum state via its web site, or through sufficient other related contacts"].) Other courts "have criticized *Zippo*'s emphasis on website interactivity" (*Shamsuddin*, at p. 810) and focus instead on "traditional due process principles" (*id.* at p. 811), asking whether the site expressly targets "residents of the forum state" (*Hy Cite Corp. v. Badbusinessbureau.com, L.L.C.* (W.D.Wis. 2004) 297 F.Supp.2d 1154, 1160). According to these courts, "Website interactivity is important only insofar as it reflects commercial activity, and then only insofar as that commercial activity demonstrates purposeful targeting of residents of the forum state or purposeful availment of the benefits or privileges of the forum state." (*Shamsuddin*,

at p. 813; see also *Neogen Corp. v. Neo Gen Screening, Inc.* (6th Cir. 2002) 282 F.3d 883, 890 ["A defendant purposefully avails itself of the privilege of acting in a state through its website if the website is interactive to a degree that reveals specifically intended interaction with residents of the state"].)

We need not, however, decide on a particular approach here because defendants' Web site, by any standard, establishes purposeful availment. By touting the proximity of their hotels to California and providing driving directions from California to their hotels, defendants' site specifically targeted residents of California. (See *Burger King, supra,* 471 U.S. at p. 472.) Defendants also concede that many of their patrons come from California and that some of these patrons undoubtedly made reservations using their Web site. As such, defendants have purposefully derived a benefit from their Internet activities in California (*id.* at p. 473), and have established a substantial connection with California through their Web site (*id.* at p. 475). In doing so, defendants have "purposefully availed [themselves] of the privilege of conducting business in" California "via the Internet." (*Enterprise Rent-A-Car Co. v. U-Haul International, Inc.* (E.D.Mo. 2004) 327 F.Supp.2d 1032, 1042-1043 [holding that a Web site that specifically targeted the forum state and its residents established purposeful availment].)

Defendants' attempt to analogize their Web site to the site in *Bensusan Restaurant Corp. v. King* (S.D.N.Y. 1996) 937 F.Supp. 295, is unavailing. In *Bensusan*, the federal district court declined to exercise personal jurisdiction over the defendant based on his Web site. But, unlike the Web site at issue here, the site in *Bensusan* was wholly passive—

not interactive—and did not specifically target forum residents. (*Id.* at p. 297.) Moreover, the defendant in *Bensusan*, unlike defendants here, conducted no business with forum residents through his Web site.

In any event, even assuming that defendants' Web site, by itself, is not sufficient to establish purposeful availment, the site in conjunction with defendants' other contacts with California undoubtedly is. Aside from their Web site specifically targeting California residents, defendants advertised extensively in California through billboards, newspapers, and radio and television stations located in California. They also listed a toll-free phone number for making reservations at their hotels in their California advertisements and on their Web site, and many of their California patrons used this number to make reservations. Finally, defendants regularly sent mailings advertising their hotels to selected California residents. As a result of these promotional activities, defendants obtained a significant percentage of their patrons from California. Thus, defendants purposefully and successfully solicited business from California residents. In doing so, defendants necessarily availed themselves of the benefits of doing business in California and could reasonably expect to be subject to the jurisdiction of courts in California.[3]

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3. (See *Shute v. Carnival Cruise Lines* (9th Cir. 1990) 897 F.2d 377, 382-383 (*Shute*) [holding that advertising in local media, through brochures sent to travel agents in the forum, and through promotional seminars in the forum established purposeful availment], revd. on other grounds in *Carnival Cruise Lines, Inc. v. Shute* (1991) 499 U.S. 585; *Shoppers Food Warehouse v. Moreno* (D.C. 2000) 746

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In reaching this conclusion, we reject defendants' contention that no purposeful availment exists here because the subject matter of their contracts with California residents resides exclusively in Nevada. Unlike the cases cited by defendants, which held that a few contracts with California residents could not, by themselves, establish purposeful availment,[4] our finding of purposeful availment is not premised solely on defendants' contracts with forum residents. Rather, our finding is premised on defendants' purposeful and successful solicitation of business within California. Indeed, "it is an inescapable fact of modern commercial life that a substantial amount of business is transacted solely by mail and wire communications across state lines, thus obviating the need for physical presence

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A.2d 320, 331 (*Shoppers Food Warehouse*) [holding that the defendant "conducted 'purposeful, affirmative activity within the'" forum "by purposefully directing advertisements for its . . . stores at a potential customer base in the" forum]; *Oberlies v. Searchmont Resort, Inc.* (Mich.Ct.App. 2001) 633 N.W.2d 408, 415 (*Oberlies*) [finding purposeful availment because "the defendant engaged in widespread advertising in" the forum "that particularly targeted" forum "residents"].)

4. (See *Goehring v. Superior Court* (1998) 62 Cal.App.4th 894, 907 [finding no purposeful availment based solely on the defendants' execution of "sales, security and escrow agreements" with a forum resident]; *Doe v. Unocal Corp.* (9th Cir. 2001) 248 F.3d 915, 924 [finding no purposeful availment based solely on the defendant's contractual relations with a forum resident]; *McGlinchy v. Shell Chemical Co.* (9th Cir. 1988) 845 F.2d 802, 816 [finding no purposeful availment based solely on the defendant's contract with a forum resident].)

within a State in which business is conducted." (*Burger King, supra*, 471 U.S. at p. 476.) Where, as here, "[t]he actions taken by" defendants "to solicit business within" California "were clearly purposefully directed toward residents of" California, "it is irrelevant where" their hotels are located. (*Shute, supra*, 897 F.2d at p. 382; cf. *Cornelison v. Chaney* (1976) 16 Cal.3d 143, 149-150 [finding purposeful availment even though the accident giving rise to the action did not occur in the forum state].)

We also find inapposite *Archibald v. Cinerama Hotels* (1976) 15 Cal.3d 853, and *Spirits, Inc. v. Superior Court* (1980) 104 Cal.App.3d 918. Unlike defendants here, neither of the defendants in *Archibald* and *Spirits* engaged in extensive advertising that specifically targeted California residents and resulted in numerous transactions with California residents. (See *Archibald*, at p. 864 [refusing to exercise jurisdiction over a hotel based solely on the activities of an independent travel agency that sold accommodations at the hotel to a California resident]; *Spirits*, at p. 925 [refusing to exercise jurisdiction based solely on the defendant's purchase of products from a California distributor and the defendant's proximity to California].)

Finally, we do not find persuasive the purposeful availment analysis in *Circus Circus, supra*, 120 Cal.App.3d 546. In *Circus Circus*, the plaintiffs brought a negligence action against the defendant, a Nevada hotel, after the theft of their property during their stay at the hotel. (*Id.* at p. 552.) In refusing to exercise jurisdiction over the defendant, the Court of Appeal spent the bulk of its opinion finding that no general jurisdiction existed and that the controversy did not

relate to or arise out of the defendant's contacts with California.[5] Nonetheless, the court also concluded that the defendant did not avail "itself of any benefits afforded by the State of California" or seek the "'protection of its laws'" based on the defendant's maintenance of a toll-free phone number for reservations (*id.* at p. 569) and "advertising in California newspapers, a service paid for and rendered without any involvement of the forum state's laws or public facilities" (*ibid.*).

By focusing solely on the defendant's involvement with California's laws or public facilities, however, *Circus Circus* applied an overly narrow interpretation of the purposeful availment test. Purposeful availment may exist even though the defendant did not invoke the legal protections of the forum state. Indeed, purposeful availment exists whenever the defendant purposefully and voluntarily directs its activities toward the forum state in an effort to obtain a benefit from that state. (See *ante*, at pp. 6-7.) And, to the extent *Circus Circus Hotels, Inc. v. Superior Court*, *supra*, 120 Cal.App.3d 546, holds that advertising activities targeted at forum residents can never establish purposeful availment, we disapprove of it. In any event, defendants' promotional activities—which were far more extensive than the promotional activities at issue in *Circus Circus*—unequivocally establish that defendants purposefully and

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5. In *Vons*, we rejected the proximate cause test applied by *Circus Circus* in determining whether the plaintiff's claims related to or arose out of the defendant's contacts with the forum. (*Vons*, *supra*, 14 Cal.4th at p. 464.) We apparently left undisturbed its analysis of purposeful availment.

voluntarily directed their activities at California residents.[6] Accordingly, we conclude that defendants purposefully availed themselves of the privilege of conducting business in California.

B.

We now turn to the second prong of the test for specific jurisdiction (the relatedness requirement), and determine whether the controversy is related to or arises out of defendants' contacts with California. We find that it is.

In *Vons*, we carefully examined the relatedness requirement. After reviewing the relevant cases and the rationale behind the specific jurisdiction doctrine, we declined to apply a proximate cause test[7] (*Vons*, *supra*, 14 Cal.4th at pp. 462-464) or a "but for" test[8] (*id.* at pp. 467-469). Following a detailed discussion of the relevant law and

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6. Our finding of purposeful availment does not rely on the "'economic reality'" test rejected in *Circus Circus*, *supra*, 120 Cal.App.3d at pages 570-571. Rather, it relies on defendants' purposeful and successful solicitation of business within California—and not on the mere foreseeability that California residents will patronize businesses of a neighboring state.

7. The proximate cause test asks whether "the alleged injury was proximately caused by the contacts in the forum state." (*Vons*, *supra*, 14 Cal.4th at p. 462.)

8. The "but for" test asks "whether the injury would have occurred 'but for' the forum contacts." (*Vons*, *supra*, 14 Cal.4th at p. 467.)

policy considerations, we also rejected the "substantive relevance" test proposed by Professor Brilmayer.[9] (*Id.* at pp. 469-474.) Instead, we adopted a substantial connection test and held that the relatedness requirement is satisfied if "there is a substantial nexus or connection between the defendant's forum activities and the plaintiff's claim." (*Id.* at p. 456.)

In adopting this test, we observed that "for the purpose of establishing jurisdiction the intensity of forum contacts and the connection of the claim to those contacts are inversely related." (*Vons*, *supra*, 14 Cal.4th at p. 452.) "[T]he more wide ranging the defendant's forum contacts, the more readily is shown a connection between the forum contacts and the claim." (*Id.* at p. 455.) Thus, "[a] claim need not arise directly from the defendant's forum contacts in order to be sufficiently related to the contact to warrant the exercise of specific jurisdiction." (*Id.* at p. 452.) Moreover, the "forum contacts need not be directed at the plaintiff in order to warrant the exercise of specific jurisdiction." (*Id.* at p. 455.) Indeed, "'"[o]nly when the operative facts of the controversy are not related to the defendant's contact with the state can it be said that the cause of action does not arise from that [contact]."'" (*Id.* at p. 455, quoting *Third Nat. Bank in Nashville v. Wedge Group Inc.* (6th Cir. 1989) 882 F.2d 1087, 1091.)

Amicus curiae Chamber of Commerce of the United States urges us to reconsider *Vons* and, instead, adopt the

9. The substantive relevance test asks whether "conduct constituting a forum contact that took place *in* the forum normally would be pleaded under state substantive law applicable to the plaintiff's cause of action." (*Vons*, *supra*, 14 Cal.4th at p. 469.)

substantive relevance test. It, however, presents nothing new. Indeed, in *Vons*, we carefully considered and rejected the very reasons cited by amicus curiae for adopting the substantive relevance test. (*Vons*, *supra*, 14 Cal.4th at pp. 469-475.) We therefore continue to apply the substantial connection test established in *Vons*.

Applying this test, we find that plaintiff's claims have a substantial connection with defendants' contacts with California. Plaintiff's causes of action for unfair competition, breach of contract, unjust enrichment, and false advertising allege that defendants failed to provide notice of an energy surcharge during the reservation process and in their advertising. Thus, plaintiff's causes of action are premised on alleged omissions during defendants' consummation of transactions with California residents and in their California advertisements. Because the harm alleged by plaintiff relates directly to the content of defendants' promotional activities in California, an inherent relationship between plaintiff's claims and defendants' contacts with California exists. Given "the intensity of" defendants' activities in California, we therefore have little difficulty in finding a substantial connection between the two. (*Vons*, *supra*, 14 Cal.4th at p. 453.) The fact that many of defendants' contacts with California do not directly arise out of plaintiff's transaction with defendants is immaterial. (See *Logan Productions, Inc. v. Optibase, Inc.* (7th Cir. 1996) 103 F.3d 49, 53 [refusing to limit the relevant contacts to "those contacts directly arising out" of defendant's "deal with" the plaintiff].) By purposefully and successfully soliciting the business of California residents, defendants could reasonably anticipate being subject to litigation in California in the event their

solicitations caused an injury to a California resident. (See *Burger King*, *supra*, 471 U.S. at pp. 475-476.)

Cases holding that claims for injuries suffered during a plaintiff's stay at a hotel or resort are not related to and do not arise from that hotel's or resort's advertising in the forum state are inapposite.[10] As an initial matter, most, if not all, of these cases did not apply the substantial connection test established in *Vons*. In any event, even if we agree with the holdings in these cases,[11] they are distinguishable. Unlike

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10. (See, e.g., *Circus Circus*, *supra*, 120 Cal.App.3d at p. 569 [holding that a tort claim arising out of a burglary of the plaintiff's hotel room does not relate to or arise out of that hotel's advertising in the forum]; *Breschia v. Paradise Vacation Club, Inc.* (N.D.Ill. 2003) 2003 WL 22872128, p. *4 [holding that a claim arising out of the plaintiff's slip and fall at a resort did not relate to or arise out of that resort's advertising in the forum]; *Bell*, *supra*, 200 F.Supp.2d at p. 1088 [holding that a claim arising out of the plaintiff's slip and fall at a hotel did not relate to or arise out of that hotel's advertising in the forum]; *Dagesse v. Plant Hotel N.V.* (D.N.H. 2000) 113 F.Supp.2d 211, 218 [same]; *Imundo v. Pocono Palace, Inc.* (D.N.J. 2002) 2002 WL 31006145, p. *2, revd. on reconsideration on another ground in 2002 WL 31006143 [same]; *Decker v. Circus Circus Hotel* (D.N.J. 1999) 49 F.Supp.2d 743, 749 [same]; *Smith v. Sands Hotel & Casino* (D.N.J. 1997) 1997 WL 162156, p. *6 (*Smith*); *Hurley v. Cancun Playa Oasis International Hotels* (E.D.Pa. 1999) 1999 WL 718556, p. *1 [same]; *Oberlies*, *supra*, 633 N.W.2d 416-417 [holding that a claim arising out of the plaintiff's slip and fall at a ski resort did not relate to or arise out of the resort's advertising in the forum].)

11. Indeed, several courts have reached the opposite conclusion—that injuries suffered during a stay at a hotel or resort *are* related to and *do* arise from that hotel's or resort's advertising in

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the injuries suffered by the plaintiffs in those cases, the injury allegedly suffered by plaintiff in this case relates *directly* to the content of defendants' advertising in California. As such, the connection between plaintiff's claims and defendants' contacts is far closer than the connection between the claims and contacts alleged in the cases cited above. Indeed, some courts that have refused to exercise jurisdiction where a plaintiff suffered an injury during a stay at a hotel or resort acknowledge that they would have reached a different conclusion if that plaintiff had alleged false advertising or fraud. (See *Smith, supra*, 1997 WL 162156 at p. *6 [suggesting that claims of false advertising or fraudulent misrepresentation would meet the relatedness requirement]; *Oberlies, supra*, 633 N.W.2d at p. 417 ["A foreign corporation that advertises in Michigan can reasonably expect to be called to defend suits in Michigan charging unlawful advertising or alleging that the advertising, itself, directly injured a Michigan resident"].) Accordingly, we conclude that plaintiff has met the relatedness requirement.

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the forum state. (See, e.g., *Nowak v. Tak How Investments, Ltd.* (1st Cir. 1996) 94 F.3d 708, 715-716; *Mallon v. Walt Disney World Co.* (D.Conn. 1998) 42 F.Supp.2d 143, 147; *O'Brien v. Okemo Mountain, Inc.* (D.Conn. 1998) 17 F.Supp.2d 98, 101; *Rooney v. Walt Disney World Co.* (D.Mass. 2003) 2003 WL 22937728, p. *4; *Sigros v. Walt Disney World Co.* (D.Mass. 2001) 129 F.Supp.2d 56, 67; *Shoppers Food Warehouse, supra*, 746 A.2d at p. 336; *Tatro v. Manor Care, Inc.* (Mass. 1994) 625 N.E.2d 549, 553-554; *Radigan v. Innisbrook Resort & Golf Club* (N.J.Sup.Ct.App.Div. 1977) 375 A.2d 1229, 1231.)

C.

Having concluded that plaintiff has satisfied the purposeful availment and relatedness requirements, we now determine "whether the assertion of specific jurisdiction is fair." (*Vons*, *supra*, 14 Cal.4th at pp. 475-476.) In making this determination, the "court 'must consider the burden on the defendant, the interests of the forum State, and the plaintiff's interest in obtaining relief. It must also weigh in its determination "the interstate judicial system's interest in obtaining the most efficient resolution of controversies; and the shared interest of the several States in furthering fundamental substantive social policies." ' " (*Id.* at p. 476, quoting *Asahi Metal Industry Co. v. Superior Court* (1987) 480 U.S. 102, 113.) "Where[, as here,] a defendant who purposefully has directed [its] activities at forum residents seeks to defeat jurisdiction, [it] must present a compelling case that the presence of some other considerations would render jurisdiction unreasonable." (*Burger King*, *supra*, 471 U.S. at p. 477.) In this case, defendants do not contend the exercise of jurisdiction would be unfair or unreasonable, and we see no reason to conclude otherwise. Therefore, we hold that defendants are subject to specific jurisdiction in California.

Appendix A

III.

Accordingly, we affirm the judgment of the Court of Appeal.

BROWN, J.

WE CONCUR:

GEORGE, C.J.
KENNARD, J.
BAXTER, J.
WERDEGAR, J.
CHIN, J.
MORENO, J.

APPENDIX B — OPINION OF THE COURT OF APPEAL OF CALIFORNIA, SECOND APPELLATE DISTRICT, DIVISION THREE FILED MARCH 11, 2004

COURT OF APPEAL OF CALIFORNIA,
SECOND APPELLATE DISTRICT,
DIVISION THREE

B164118

March 11, 2004, Filed

FRANK SNOWNEY et al.,

Plaintiffs and Appellants,

v.

HARRAH'S ENTERTAINMENT, INC. et al.,

Defendants and Respondents.

JUDGES: KITCHING, J.; Croskey, Acting P. J., and Aldrich, J., concurred.

OPINION: KITCHING, J.—Frank Snowney appeals the dismissal of his complaint after the superior court granted the defendants' motion to quash service of summons based on lack of personal jurisdiction. Snowney contends the defendants, some

of whom own or operate hotels in the State of Nevada, have sufficient contacts with the State of California to justify the exercise of personal jurisdiction. We conclude that the defendants who own and operate the Nevada hotels have sufficient contacts with California to justify the exercise of personal jurisdiction based on their advertising in California, interactive Internet site, toll-free telephone number for hotel reservations, and other activities purposefully directed at California residents. We conclude further that the defendants who do not own or operate the hotels have insufficient contacts with California to justify the exercise of personal jurisdiction.

FACTUAL AND PROCEDURAL BACKGROUND

Defendants Harrah's Las Vegas, Inc., Harrah's Laughlin, Inc., Harrah's Operating Company, Inc., Rio Properties, Inc., and Harveys Tahoe Management Company, Inc. (collectively Hotel Defendants), own and operate hotels in Nevada. Defendants Harrah's Entertainment, Inc., Rio Hotel & Casino, Inc., and Harveys Casino Resorts are holding companies each of which owns a Hotel Defendant but does not own or operate a hotel in Nevada. Defendants Harrah's Reno Holding Company, Inc., Rio Vegas Hotel & Casino, Inc., Harrah's Management Company, and Harveys P.C., Inc., neither own a Hotel Defendant nor own or operate a hotel in Nevada.

Snowney sued Harrah's Entertainment, Inc., and others in February 2002 alleging counts for violation of the unfair competition law, breach of contract, unjust enrichment, and false

advertising.[1] He filed the complaint as both a representative action and a class action.

The defendants jointly moved to quash service of summons based on lack of personal jurisdiction. They argued that they do business only in Nevada and have no significant contacts with California to justify either general or specific jurisdiction. A declaration by Brad L. Kerby, corporate secretary of Harrah's Entertainment, Inc., stated that none of the defendants has a principal place of business in California, operates a hotel in California, conducts business in California, or has bank accounts or employees in California. He also acknowledged that Harrah's Marketing Services Corporation, a subsidiary of defendant Harrah's Operating Company, Inc., maintains offices in California that "assist customers who contact those offices" and "attempt to attract a limited number of high-end gaming patrons to Harrah's properties."

Snowney opposed the motion to quash, submitting a transcript of the deposition of the defendants' declarant together with his own declaration and declarations by his attorney. Snowney argued that the evidence showed that a substantial portion of the hotels' patrons were California residents; that the defendants advertised to California residents through billboards in California, print advertisements in California newspapers, and

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1. The other defendants named in the complaint are Harrah's Las Vegas, Inc., Harrah's Laughlin, Inc., Harrah's Reno Holding Company, Inc., Rio Hotel & Casino, Inc., Rio Vegas Hotel & Casino, Inc., Harrah's Operating Company, Inc., Harrah's Management Company, and Harveys P.C., Inc. Snowney later named Harveys Casino Resorts, Harveys Tahoe Management Company, Inc., and Rio Properties, Inc., as additional defendants.

radio and television advertisements on California stations; that they accepted reservations from California residents via the Internet and telephone; that an Internet site provided driving directions to the hotels from California locations; that two of the defendants were qualified to do business in California; and that a related marketing company maintained offices in California. Snowney argued that these activities supported the exercise of specific jurisdiction.

The superior court concluded that the defendants had insufficient contacts with California to justify the exercise of general or specific personal jurisdiction in California. The order granting the motion to quash states, "the fact that a defendant advertises in the forum state, induces readers of its advertisements to patronize its business, and profits substantially from this foreseeable economic reality does not automatically confer specific jurisdiction. [Citations.]" (Boldface omitted.) The order further states, "the defendants herein are doing business with California residents but are not doing business in California." The court dismissed the action.

CONTENTIONS

Snowney's principal contention is that the defendants have sufficient contacts with California to justify the exercise of specific personal jurisdiction. We address his other contention in the unpublished portion of this opinion.

Appendix B

DISCUSSION

1. *Standard of Review*

(1) If there is no conflict in the evidence, the question whether a defendant's contacts with California are sufficient to justify the exercise of personal jurisdiction in California is a question of law that we review de novo. If there is a conflict in the evidence underlying that determination, we review the superior court's express or implied factual findings under the substantial evidence standard. (*Vons Companies, Inc. v. Seabest Foods, Inc.* (1996) 14 Cal.4th 434, 449 [58 Cal. Rptr. 2d 899, 926 P.2d 1085] (*Vons*).)

2. *Constitutional Limits to the Exercise of Personal Jurisdiction*

(2) A plaintiff opposing a motion to quash service of process has the initial burden to demonstrate facts justifying the exercise of jurisdiction. (*Vons*, *supra*, 14 Cal.4th at p. 449.) If the plaintiff satisfies that burden, the burden shifts to the defendant to "present a compelling case" that the exercise of jurisdiction would be unreasonable. (*Burger King Corp. v. Rudzewicz* (1985) 471 U.S. 462, 477 [85 L. Ed. 2d 528, 105 S. Ct. 2174] (*Burger King*); accord, *Vons*, at p. 476.)

(3) A California court may exercise personal jurisdiction over a foreign defendant to the extent allowed under the state and federal Constitutions. (Code Civ. Proc., § 410.10.) The exercise of personal jurisdiction is constitutionally permissible only if the defendant has sufficient "minimum contacts" with the state so that the exercise of jurisdiction "does not offend

'traditional notions of fair play and substantial justice.' [Citations.]" (*Internat. Shoe Co. v. Washington* (1945) 326 U.S. 310, 316 [90 L. Ed. 95, 66 S. Ct. 154]; accord, *Pavlovich v. Superior Court* (2002) 29 Cal.4th 262, 268 [127 Cal. Rptr. 2d 329, 58 P.3d 2] (*Pavlovich*).) In other words, the defendant's contacts with the forum state must be such that the defendant had "fair warning" that its activities may subject it to personal jurisdiction in the state. (*Burger King*, *supra*, 471 U.S. at p. 472; accord, *World-Wide Volkswagen Corp. v. Woodson* (1980) 444 U.S. 286, 297 [62 L. Ed. 2d 490, 100 S. Ct. 559].)

"[T]his 'fair warning' requirement is satisfied if the defendant has 'purposefully directed' his activities at residents of the forum [citation], and the litigation results from alleged injuries that 'arise out of or relate to' those activities [citation]." (*Burger King*, *supra*, 471 U.S. at p. 472.)

(4) A defendant who has substantial, continuous, and systematic contacts with the forum state is subject to general jurisdiction in the state, meaning jurisdiction on any cause of action. (*Perkins v. Benguet Mining Co.* (1952) 342 U.S. 437, 445-446 [96 L. Ed. 485, 72 S. Ct. 413, 63 Ohio Law Abs. 146]; see *Vons*, *supra*, 14 Cal.4th at p. 445.) Snowney does not contend the defendants are subject to general jurisdiction. Instead, he contends the defendants are subject to specific jurisdiction, meaning jurisdiction on a cause of action arising out of or related to the defendants' contacts with the forum state. (*Helicopteros Nacionales de Colombia v. Hall* (1984) 466 U.S. 408, 414, fn. 8 [80 L. Ed. 2d 404, 104 S. Ct. 1868]; *Vons*, at p. 446.)

(5) A defendant is subject to specific jurisdiction only if three requirements are satisfied. First, the defendant must have either "'purposefully directed'" its activities at forum residents; created a "'substantial connection'" with the forum state by deliberately engaging in significant activities in the forum or creating continuing obligations between itself and residents of the forum state; "'purposefully avail[ed] itself of the privilege of conducting activities within the forum [s]tate, thus invoking the benefits and protections of its laws;'" or "'purposefully derive[d] benefit'" from its interstate activities. (*Burger King, supra*, 471 U.S. at pp. 472-476; accord, *Vons, supra*, 14 Cal.4th at p. 446.) Second, the dispute must "'arise out of or relate to'" the defendant's contacts with the forum state. (*Burger King*, at p. 472; accord, *Vons*, at p. 446.) Third, the exercise of jurisdiction must be fair and reasonable. (*Burger King*, at pp. 476-478; *Vons*, at pp. 447-448.) In evaluating minimum contacts, a court must focus on "'the relationship among the defendant, the forum, and the litigation.'" (*Calder v. Jones* (1984) 465 U.S. 783, 788 [79 L. Ed. 2d 804, 104 S. Ct. 1482].)

A court should not apply these guidelines mechanically. Instead, a court must weigh the facts in each case to determine whether the contacts are sufficient. (*Kulko v. California Superior Court* (1978) 436 U.S. 84, 92 [56 L. Ed. 2d 132, 98 S. Ct. 1690]; *Pavlovich, supra*, 29 Cal.4th at p. 268.) The decision ultimately turns on the question of fairness, that is, "'fair play and substantial justice.'" (*Burger King, supra*, 471 U.S. at pp. 485-486; accord, *Vons, supra*, 14 Cal.4th at p. 475.) Such an inquiry "preclude[s] clear-cut jurisdictional rules." (*Burger King*, at p. 486, fn. 29; accord, *Vons*, at p. 475.)

Appendix B

(6) The California Supreme Court has held that a cause of action arises out of or relates to the defendant's contacts with the forum state if there is a "substantial connection" between the plaintiff's cause of action and the defendant's forum contacts. (*Vons, supra*, 14 Cal.4th at p. 452; *Cornelison v. Chaney* (1976) 16 Cal.3d 143, 149 [127 Cal. Rptr. 352, 545 P.2d 264].) The forum contacts need not be the proximate cause or "but for" cause of the alleged injuries. (*Vons*, at pp. 462-467.) The forum contacts also need not be "substantively relevant" to the cause of action, meaning those contacts need not establish or support an element of the cause of action. (*Vons*, at pp. 469-475.)

(7) For purposes of determining whether the defendant's forum contacts are substantially connected to the cause of action, the intensity of the defendant's forum contacts and the required degree of connection between the cause of action and those contacts are inversely related. (*Vons*, at p. 452.) "'[A]s the relationship of the defendant with the state seeking to exercise jurisdiction over him grows more tenuous, the scope of jurisdiction also retracts, and fairness is assured by limiting the circumstances under which the plaintiff can compel him to appear and defend. . . .'" (*Ibid.*)

(8) Moreover, a defendant's conduct need not cause an injury in the forum state to justify the exercise of personal jurisdiction. Rather, a defendant who has "purposefully directed" its activities at forum residents or otherwise established a substantial connection with the forum is subject to personal jurisdiction if the alleged injury arises out of or relates to those contacts, regardless of where the injury occurred. (See *Burger King, supra*, 471 U.S. at p. 472.) Thus, the California Supreme

Court in *Cornelison v. Chaney*, *supra*, 16 Cal.3d 143 held that a trucker had sufficient minimum contacts with California and that the plaintiff's wrongful death cause of action "arises out of or has a substantial connection with" those contacts, despite the fact that both the tortious conduct and the plaintiff's injury occurred in Nevada. (*Id.* at pp. 146, 149.)

3. *The Hotel Defendants Have Sufficient Contacts With California to Justify the Exercise of Specific Jurisdiction*

All of the Hotel Defendants have directed advertising at California residents, including billboards in this state, print advertisements in the Los Angeles Times and Orange County Register or in Northern California newspapers, and radio and television advertisements on California stations.

(9) Advertising in the forum is a means of purposefully directing activities at forum residents, and depending on the circumstances may support the exercise of personal jurisdiction. (*Asahi Metal Industry Co. v. Superior Court* (1987) 480 U.S. 102, 112 [94 L. Ed. 2d 92, 107 S. Ct. 1026] (lead opn. of O'Connor, J.).)

Harrah's Marketing Services Corporation markets the Hotel Defendants' gaming and hotel services to select "high-end" California residents through offices located in this state. Although limited in number, the high-end patrons may have significant value for the defendants' business. Through these marketing activities, the Hotel Defendants solicit business from California residents. Even though the defendants conduct marketing activities through a separate company, by engaging the marketing services the Hotel Defendants direct their activities at California residents.

Appendix B

A central Internet site provides information on the six hotels here at issue. The California Supreme Court in *Pavlovich, supra*, 29 Cal.4th at page 274 adopted a sliding scale analysis to determine whether Internet use can justify the exercise of personal jurisdiction. The determination turns on the degree of interactivity of the Internet site and the commercial nature and extent of the exchange of information. (*Ibid.*, citing *Zippo Mfg. Co. v. Zippo Dot Com, Inc.* (W.D.Pa. 1997) 952 F. Supp. 1119, 1124.)

(10) An interactive Internet site through which a nonresident defendant enters into contracts or conducts other business transactions with forum residents can be a means of purposefully directing activities at forum residents and, depending on the circumstances, may support the exercise of personal jurisdiction. (*Ibid.*) The *Pavlovich* court stated that the defendant's Internet site was passive in that it only posted information and had no interactive features. The site did not target California residents. Finally, there was no evidence that a California resident had ever visited or downloaded information from the site. The court therefore concluded that the defendant's use of the site did not justify the exercise of specific jurisdiction. (*Pavlovich*, at p. 274.) Here, in contrast, the Internet site is interactive.

(11) California customers can and do make room reservations online. The site also provides driving directions to the hotels from several California cities. These features constitute an effort to solicit business from California residents.

A central toll-free telephone reservation system in another state accepts reservations from customers nationwide. Although the defendants have not disclosed specific figures, they acknowledge that California as the most populous state in the

nation and as a state adjoining Nevada is home to "a significant percentage" of their patrons making telephone reservations.

(12) We conclude that by soliciting and receiving the patronage of California residents through these activities and to this extent, the Hotel Defendants have purposefully directed their activities at California residents, have purposefully derived benefit from their contacts with California, and have established a substantial connection with this state.

We decline to follow *Circus Circus Hotels, Inc. v. Superior Court* (1981) 120 Cal. App. 3d 546 [174 Cal. Rptr. 885], disapproved on another ground in *Vons, supra*, 14 Cal.4th at page 464. The *Circus Circus* court concluded that the nonresident defendant's advertisements in California newspapers and toll-free telephone number for hotel reservations were insufficient to support the exercise of general jurisdiction in California absent additional forum contacts. (*Id.* at p. 567.) The court concluded further that those forum contacts were insufficient to support the exercise of specific jurisdiction. The court quoted *Cornelison v. Chaney, supra*, 16 Cal.3d at page 148, stating that to support the exercise of specific jurisdiction the defendant either must perform some act in the forum or "'defendant must perform some other act by which he purposefully avails himself of the privilege of conducting activities in the forum, thereby invoking the benefits and protection of its laws.' [Citation.]"[2] (*Circus Circus*, at

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2. This language originates from *Hanson v. Denckla* (1958) 357 U.S. 235, 253 [2 L. Ed. 2d 1283, 78 S. Ct. 1228]: "[I]t is essential in each case that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws."

p. 569.) Adopting a "literal application" of this language, the *Circus Circus* court concluded that the defendant did not avail itself of benefits afforded by California or seek the protection of the state's laws because the advertising in California newspapers was "a service paid for and rendered without any involvement of the forum state's laws or public facilities." (*Ibid.*)

We believe that this narrow interpretation of the traditional "purposeful availment" requirement is unwarranted. The United States Supreme Court has used various language to describe the forum contacts necessary to support the exercise of specific jurisdiction. (*Vons, supra*, 14 Cal.4th at p. 446.) In addition to quoting the language from *Hanson v. Denckla, supra*, 357 U.S. 235 quoted *ante*, the court in *Burger King* stated that the exercise of personal jurisdiction is proper if the defendant has "'purposefully directed'" its activities at forum residents, or "'purposefully derive[s] benefit'" from forum activities, or "'deliberately' has engaged in significant activities within a State [citation] or has created 'continuing obligations' between himself and residents of the forum [citation]." (*Burger King, supra*, 471 U.S. at pp. 472, 473, 475-476.) The court in *World-Wide Volkswagen Corp. v. Woodson, supra*, 444 U.S. 286 and a divided court in *Asahi Metal Industry Co. v. Superior Court, supra*, 480 U.S. 102 also spoke in terms of a defendant's efforts to benefit from the market for its product in the forum state. (*World-Wide Volkswagen*, at p. 297; *Asahi*, at p. 112 (lead opn. of O'Connor, J.); *id.* at p. 117 (conc. opn. of Brennan, J.).) These various formulations derive directly from the fundamental requirement of "fair play and substantial justice" or "fair warning," discussed *ante*. In deciding the question of personal jurisdiction, courts should carefully consider the facts in each case in light of these guidelines and focus on the ultimate

question whether the exercise of jurisdiction would be fair and reasonable.

4. *The Alleged Causes of Action Arise from or Are Substantially Connected to the Hotel Defendants' California Contacts*

Snowney's alleged causes of action for violation of the unfair competition law, breach of contract, unjust enrichment, and false advertising all arise from or are substantially connected to the Hotel Defendants' efforts to solicit California patrons. The false advertising count arises directly from the defendants' local advertising in California in that the complaint, liberally construed (Code Civ. Proc., § 452), alleges that the advertising was false or misleading.

The counts for violation of the unfair competition law also arise directly from the Hotel Defendants' forum contacts to the extent the counts are based on a violation of the false advertising law (see *Kasky v. Nike, Inc.* (2002) 27 Cal.4th 939, 950 [119 Cal. Rptr. 2d 296, 45 P.3d 243]). To the extent those counts are based on alleged unfair or fraudulent business practices apart from false advertising in California, we conclude that the counts are substantially connected to the defendants' California contacts. Many of the California residents who visited the hotels presumably did so as a result of the defendants' advertising in California, or made their reservations via electronic or telephonic communications that were purposefully directed at California residents.

(13) We conclude that those California contacts are substantially connected to causes of action that challenge an alleged

mandatory surcharge imposed on all hotel guests. We need not detect a causal connection between the defendants' California contacts and the alleged charging of a nightly energy surcharge without prior notice. (*Vons*, *supra*, 14 Cal.4th at pp. 462-467.) Rather, we conclude, in light of the nature and intensity of the contacts, that the contacts are sufficiently related to the alleged causes of action to justify the exercise of personal jurisdiction. Our conclusion also applies to the breach of contract and unjust enrichment counts, which are based on essentially the same alleged wrongdoing.

5. *The Exercise of Jurisdiction Would Be Fair and Reasonable*

In determining whether the exercise of jurisdiction would be fair and reasonable, a court must consider (1) the burden on the defendant of defending an action in the forum; (2) the forum state's interest in adjudicating the dispute; (3) the plaintiff's interest in obtaining relief; (4) judicial economy; and (5) the states' shared interest "'in furthering fundamental substantive social policies.'" (*Asahi Metal Industry Co. v. Superior Court*, *supra*, 480 U.S. at p. 113, citing *World-Wide Volkswagen Corp. v. Woodson*, *supra*, 444 U.S. at p. 292.) When minimum contacts are established, the interests of the plaintiff and the forum often outweigh the serious burdens imposed on a foreign defendant. (*Asahi*, at p. 114.) A defendant who has purposefully directed its activities at forum residents "must present a compelling case" that the exercise of jurisdiction would be unreasonable. (*Burger King*, *supra*, 471 U.S. at p. 477; accord, *Vons*, *supra*, 14 Cal.4th at p. 476.)

Appendix B

The defendants have made no effort to show that the exercise of jurisdiction would be unreasonable, either in the superior court or on appeal. Accordingly, our discussion of this requirement is brief. Based on this record, we discern no extenuating circumstances indicating that it would be unreasonable to require the Hotel Defendants to defend this action in California.

6. *There Is No Basis for Personal Jurisdiction Over the Other Defendants*

There is no evidence that the defendants other than the Hotel Defendants have purposefully directed their activities at California residents or have significant contacts with California. Those defendants therefore are not subject to personal jurisdiction in California. Although Harveys P.C., Inc., is qualified to do business in California, it is a Nevada corporation with its principal place of business in Nevada, it operates no hotel or casino in California or Nevada, and it does not advertise or solicit business in California. Harveys P.C., Inc., therefore is not subject to personal jurisdiction in California, despite its qualification to do business here. (*DVI, Inc. v. Superior Court* (2002) 104 Cal.App.4th 1080, 1095 [128 Cal. Rptr. 2d 683].)

Those defendants whose only relationship with the alleged causes of action is that they own one of the Hotel Defendants are not subject to personal jurisdiction based solely on that ownership. (*Sonora Diamond Corp. v. Superior Court* (2000) 83 Cal.App.4th 523, 540, 546 [99 Cal. Rptr. 2d 824].)

Appendix B

*7. The Defendants' Violation of Code of Civil Procedure Section 418.10, Subdivision (b), Did Not Divest the Court of Jurisdiction to Rule on the Motion** [NOT CERTIFIED FOR PUBLICATION]

DISPOSITION

The judgment of dismissal is affirmed as to defendants Harrah's Entertainment, Inc., Rio Hotel & Casino, Inc., Harveys Casino Resorts, Harrah's Reno Holding Company, Inc., Rio Vegas Hotel & Casino, Inc., Harrah's Management Company, and Harveys P.C., Inc., and reversed as to defendants Harrah's Las Vegas, Inc., Harrah's Laughlin, Inc., Harrah's Operating Company, Inc., Rio Properties, Inc., and Harveys Tahoe Management Company, Inc. The defendants in the former group are entitled to costs on appeal. Snowney is entitled to costs on appeal against the latter group of defendants only.

Croskey, Acting P. J., and Aldrich, J., concurred.

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* See footnote, *ante*, page 996.

APPENDIX C — RULING OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES FILED OCTOBER 31, 2002

SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES

Case No.: BC267575

Assigned: Hon. Peter D. Lichtman

Hearing Held: October 29, 2002

Submitted: October 29, 2002

Frank Snowney,

Plaintiff,

vs.

Harrah's Entertainment, Inc. et al.,

Defendants

Court's Ruling re: Defendants' Motion To Quash Service of Summons for Lack of Personal Jurisdiction

On October 29, 2002, this Court heard the arguments of counsel with respect to Defendants' Motion to Quash Service of Summons for Lack of Personal Jurisdiction. Having read and considered all moving and opposing points and authorities, this Court now proceeds with its ruling.

Appendix C

Court's Ruling

Each of the named defendants as well as the added Doe defendants move this Court to quash service of summons on the basis that this Court lacks personal jurisdiction both general and specific.

The instant action is predicated on plaintiff's claim that Defendants advertised hotel rooms at one rate, yet charged all hotel patrons an additional nightly energy surcharge without disclosing the charge at any time during the reservation or check-in process. The hotel patrons were not given notice of the charge until they checked out and received their bill.

CCP § 410.10 permits this court to exercise jurisdiction over parties "on any basis not inconsistent with the Constitution of the United States." Personal jurisdiction over a non-resident party is proper only when that party has "certain minimum contacts with [the forum state] such that maintenance of the suit does not offend traditional notions of fair play and substantial justice." ***Helicopteros Nacionales de Columbia, S.A. v. Hall*** (1984) 466 U.S. 408, 414 (quoting ***International Shoe Co. v. Washington*** (1945) 326 U.S. 310, 316.)

Plaintiff has the burden of proof in a jurisdiction challenge to show that minimum contacts exist between the defendant and the forum state. ***Edmunds v. Superior Court*** (1994) 24 Cal. App. 4th 221, 228.

The Court may ***only*** exercise jurisdiction over defendants if the plaintiff establishes that (1) "general" jurisdiction exists because the defendants activities in California are ***"extensive,***

wide-ranging, substantial, continuous and systematic," without regard to whether the defendants' activities in the forum state relate to the plaintiffs claim; ***(Henderson v. Superior Court*** (1978) 77 Cal. App. 3d 583, 590; ***Magnecomp Corp. v. Athens Co., Ltd.*** (1989) 209 Cal. App. 3d 526, 534) or (2) "limited" or "specific" jurisdiction exists because a "substantial nexus exists between plaintiffs cause of action and defendants' activities within the state." ***Henderson,*** *supra* at 590; ***Sammons Enterprises, Inc. v. Superior Court*** (1988) 205 Cal. App. 3d 1427, 1434-35.

Here, plaintiff alleges that defendants are subject to this Court's jurisdiction based on (1) their alleged management and operation of a casino in San Diego county; (2) their alleged maintenance of offices in California; (3) their advertisements in print media and other venues; and (4) their direct mail campaigns throughout California.

As to the first point, this Court is satisfied that the evidence put before the Court has established that the defendants do not own and operate a casino in San Diego County. The casino to which the plaintiff refers is owned and operated by Native Americans, not HCAL, Inc. pursuant to 25 U.S.C. § 2711 which authorizes Indian Tribes and companies like HCAL, Inc. to enter into casino management contracts, where the company assumes managerial duties, but the Native Americans actually operate and regulate their gambling establishments. See 25 U.S.C. § 2701(5), 2702(1).

As for the second point raised by the plaintiff, the Court notes that personal jurisdiction for non-residents cannot be based solely on service of a local agent; other contacts must be shown.

Appendix C

See Gray Line Tours of Southern Nevada v. Reynolds Electrical & Engineering Co. Inc. (1987) 193 Cal. App. 3d 190, 193-94.

As for plaintiff's argument of general jurisdiction, it should be noted that only systematic and continuous contacts with a state would justify the exercise of general jurisdiction over a party. ***Sammons,*** *supra* at 1434. The activities must be extensive, wide ranging, and substantial. ***Henderson,*** at 590.

The fact that a company not doing business in California is the parent of a company that does do business in California is insufficient ground to establish personal jurisdiction over the parent. ***Doe v. Unocal*** (9th Cir. 2001) 248 F. 3d 915, 925; ***Transure, Inc. v. Marsh and McLennan, Inc.*** (9th Cir. 1985) 766 F. 2d 1297, 1299. The same applies to sister or related corporations.

At best the plaintiff herein has established that certain of the defendants advertise in California, provide California residents with an 800 number to make reservations and operate a website accessible to California residents where they can make reservations. Plaintiffs argue that certain defendants have 3 offices in California. The defendants dispute this assertion and state that Harrah's Marketing Services Corp. (which is not a defendant in the action but is a wholly owned subsidiary of Harrah's Operating Company, Inc.) operates the offices.

Accordingly, the focus of plaintiff's arguments now turns to advertisements. Advertising campaigns in California are not sufficient to establish **general jurisdiction** over defendants in California. ***Circus Circus Hotels Inc. v. Superior Court of***

Appendix C

Orange County (1981) 120 Cal. App. 3d 546, 566-67. (disapproved on other grounds in ***Von's Companies, Inc v. Seabest Foods Inc.*** (1996) 14 Cal. 4th 434, 460-63.) In ***Circus Circus***, the court found that California jurisdiction was not reasonable even though ***Circus Circus*** substantially and regularly advertised in California and maintained an 800 number, which readers of the advertising could call to make reservations at the hotel.

Moreover, maintenance of a website accessible by California residents is not sufficient to establish **general jurisdiction** over defendants in California. See ***Gator.com Corp v. L.L. Bean, Inc,*** 2001 U.S. Dist. LEXIS 19737 (difference between doing business with California and doing business in California); ***Jewish Defense Organization, Inc. v. Superior Court*** (1999) 72 Cal. App. 4th 1045, 1057.

Hence, the state of the law appears to dictate that plaintiff's claim of **general jurisdiction** must fail.

As for **specific jurisdiction,** even where there is no general personal jurisdiction, a defendant may be subject to specific jurisdiction where the claims alleged are related to the defendants' activities or contacts in California or put a different way specific jurisdiction may exist "if the defendant has purposefully availed himself or herself of forum benefits" [citation omitted], and the "controversy is related to or 'arises out of' a defendant's contacts with the forum." [citations omitted] ***Vons,*** *supra* at 446.

Appendix C

The test for specific jurisdiction is:

1. Defendants have done some act by which they purposefully availed themselves of the privilege of conducting business in this forum, thereby invoking the benefits and protections of its laws; and

2. The claim arises out of defendants' forum related activity; and

3. The exercise of jurisdiction is reasonable. ***Terracom v. Valley National Bank*** (9th Cir. 1995) 49 F. 3d 555, 559.

Once again, the fact that a defendant advertises in the forum state, induces readers of its advertisements to patronize its business, and profits substantially from this foreseeable economic reality does not automatically confer **specific jurisdiction.** *See* ***Circus Circus,*** *supra* at 571; ***Spirits, Inc. v. Sup. Crt.*** (1980) 104 Cal. App. 3d 918 (rejecting notion of economic reality absent actual injury occurring in the forum.)

The fact that a defendant has contracted via computer with Internet service providers, which may be California corporations, or which may maintain offices or databases in California is not sufficient to constitute "purposeful availment" under the specific jurisdiction test. ***Jewish Defense Organization, Inc.,*** *supra,* 72 Cal. App. 4th at 1060-62.

Defendants have established that they have no direct mailing campaign to California. The only direct mailing are to individuals who are enrolled in Harrah's rewards program.

Appendix C

In light of the record presented by the moving and opposing papers, this Court chooses to follow the rationale set forth in **Gator.com Corp v. L.L. Bean, Inc,** 2001 U.S. Dist. LEXIS 19737 which is that the defendants herein are doing business with California residents but are not doing business in California. **Accordingly, this Court grants the motion to quash as to the following moving defendants:**

1. Harrah's Reno Holding Company, Inc.
2. Rio Vegas Hotel & Casino, Inc.
3. Harrah's Management Company
4. Harveys P.C. Inc.
5. HET
6. Rio Hotel & Casino, Inc.
7. Harveys Casino Resorts
8. Harrah's Las Vegas, Inc.
9. Harrah's Laughlin, Inc.
10. Harrah's Operating Company, Inc.
11. Harveys Tahoe Management Company, Inc.
12. Rio Properties, Inc.

Appendix C

Conclusion

In light of the Court's ruling, a further status conference is set for December 20th, 2002 at 10:30 A.M. in order for counsel to discuss with the Court any further matters that need to be addressed. A copy of this Court's ruling has been served on all counsel of record via U. S. Mail.

Dated: 10-31 2002

s/ PETER D. LICHTMAN
Peter D. Lichtman
Judge of Superior Court

APPENDIX D – STATUTE INVOLVED

Cal. Code Civ. Proc. § 410.10 Basis

A court of this state may exercise jurisdiction on any basis not inconsistent with the Constitution of this state or of the United States.

APPENDIX E – CONSTITUTIONAL PROVISION INVOLVED

U.S. CONST. amend XIV, § 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

APPENDIX F — DECLARATION OF FRANK SNOWNEY EXECUTED APRIL 18, 2002

DECLARATION OF FRANK SNOWNEY

I, FRANK SNOWNEY SAY:

1. If called as a witness, I could competently testify to all of the following from my own personal knowledge. I am the Plaintiff to this action.

2. I have seen advertisements for Harrah's hotel and casino in Las Vegas in the Los Angeles Times newspaper prior to my stay at Harrah's.

3. A few days prior to my stay at Harrah's Las Vegas, from my home in San Gabriel, California, I called Harrah's reservation line and reserved a room at Harrah's Las Vegas, for November 24, 2001. I was informed that this room would cost fifty dollars ($50.00) for my one night stay. I was also informed that I would also be charged room tax. I was not informed that I would be charged for anything else, nor was I told that the price of the hotel room would be anything other than the fifty dollars ($50.00) plus room tax. I gave the operator my credit card number.

4. On November 24, 2001, I checked into Harrah's Las Vegas. Upon check-in I was never told that I would be charged an energy surcharge during my stay. There were no signs on the counter, nor were there any notices given to me, either orally or in writing, that I would be charged anything other than the room rate of fifty dollars ($50.00) plus room tax. There was no information in my hotel room indicating that I would also be charged an energy surcharge.

Appendix F

5. Upon check out, I paid my bill. I did not notice that there was a three dollar ($3.00) energy surcharge on my bill, until long after check out. I was never told about this charge prior to being presented with my bill.

I certify under penalty of perjury of the laws of the State of California that the foregoing is true and correct.

Executed this April 18, 2002, at West Covina California.

s/ Frank Snowney
Frank Snowney